

1 States and brings us into every one of the
2 states in the U.S. and Hawaii.

3 MR. SCHMIDT: Thank you. Nothing
4 further.

5 JUDGE SIPPEL: Okay. I just have
6 one clarification question. On 506, at the
7 bottom, the question is, "Explain how D2 is
8 different from D1." Well, I have the same
9 question I guess. D2 -- I understand what
10 that is, and we have talked about that. That
11 has got the [REDACTED] and the basic
12 expanded has the [REDACTED] whatever. But
13 where -- is D1 -- what does D1 signify? What
14 does that -- what does it --

15 THE WITNESS: Your Honor, at the
16 time I didn't know, so I was asking what the
17 differences were, because this was relatively
18 new information for me. So I didn't know what
19 D2 or D1 was, and I was just trying to find at
20 the very least what we -- what the numbers of
21 homes were, so I could at least start to get
22 my arms around what that meant in size and

1 scope for us. But I clearly didn't understand
2 the difference between D1 and D2 and was
3 asking the question.

4 JUDGE SIPPEL: Okay. Well, I
5 wasn't trying to test -- can you explain to me
6 -- I don't know -- I am -- I will take an
7 answer from anybody. What is the difference
8 between D2 and D1?

9 MR. CARROLL: Your Honor, D1 is a
10 more penetrated digital level. D stands for
11 digital.

12 JUDGE SIPPEL: Yes.

13 MR. CARROLL: It is a digital
14 level that is more penetrated than D2. And
15 '04 contract referenced D2. D2's definition
16 is the second most penetrated digital level,
17 hence D2. D1 would be the first most
18 penetrated digital level.

19 JUDGE SIPPEL: Well, but that is
20 not the expanded basic?

21 MR. CARROLL: No.

22 JUDGE SIPPEL: That is --

1 MR. CARROLL: It is digital, but
2 with more subscribers than D2, and analog is
3 -- to get expanded basic, you go into the
4 analog world. And we will be happy -- since
5 I am probably not -- should not be giving
6 evidence on the record, I am happy to answer
7 Your Honor's questions. But I think through
8 subsequent witnesses we can have somebody
9 confirm that for you, and you can have any
10 followup questions, if Your Honor has, on
11 that.

12 JUDGE SIPPEL: All right. Well,
13 thank you. Thank you. I just want to be sure
14 -- I was trying to get the clarification. You
15 gave it to me, and so D -- the numbers we have
16 been talking about here -- again, I am just
17 trying to get a feel here -- D2 has been in
18 the [REDACTED] number. I have heard that
19 equated. What would a D1 penetration be?

20 MR. CARROLL: You have now
21 exhausted my information. I can't answer that
22 question, but I can undertake to get an answer

1 for you.

2 JUDGE SIPPEL: All right. Well,
3 we'll find out.

4 MR. CARROLL: Okay.

5 JUDGE SIPPEL: We'll find out. Do
6 you want to shed any light on that, Mr.
7 Schmidt?

8 MR. SCHMIDT: I do not want to try
9 to explain Comcast numbers.

10 JUDGE SIPPEL: Okay. Well, here,
11 up above for Mr. Shaw, he said it's digital
12 plus [REDACTED] HH instead of [REDACTED] are
13 getting rid of D2 soon. Well, I take it that

14 --

15 MR. CARROLL: HH would be
16 households. I would guess that that reference
17 has Mr. Shaw indicating that D1 might be in
18 the [REDACTED] range, but I can't confirm that
19 myself.

20 JUDGE SIPPEL: Okay. And then he
21 says, "They are getting rid of D2 soon." And
22 this is November 2006. This means that --

1 this is what you're talking about, you're off
2 of D2, and we are going to put you back up
3 upstairs on the expensive one.

4 MR. CARROLL: I don't even have
5 the exhibit in front of me, so I probably
6 shouldn't say.

7 JUDGE SIPPEL: Do you have any
8 idea what that is? You have been testifying
9 on this document?

10 THE WITNESS: I do not have any
11 idea about that.

12 JUDGE SIPPEL: Do you know what I
13 am asking?

14 THE WITNESS: Yes, I --

15 JUDGE SIPPEL: This says -- this
16 little phrase down here "they are getting rid
17 of D2 soon."

18 THE WITNESS: Yes, I -- Judge, I
19 don't know if those numbers are correct, nor
20 would I know --

21 JUDGE SIPPEL: Well, forget about
22 the numbers. I know we are off the numbers

1 now. Just what thought is trying to be
2 transmitted from Mr. Shaw that they are
3 getting rid of D2 soon?

4 THE WITNESS: I wouldn't know what
5 he was trying to say there.

6 JUDGE SIPPEL: All right. I don't
7 either. Okay. All right. We'll pick it up
8 later. Interesting.

9 Anybody have anything further?

10 MR. SCHMIDT: No, Your Honor.

11 JUDGE SIPPEL: No, I don't either.

12 MR. PEREZ-MARQUES: No, Your
13 Honor.

14 JUDGE SIPPEL: Okay. We are going
15 to close down, then, for the day. We will be
16 back in at 9:30 tomorrow. Who will be the
17 first witness we are going to have?

18 MR. CARROLL: Would that be Mr.
19 Tagliabue?

20 MR. SCHMIDT: No.

21 MR. CARROLL: Not ready first
22 thing in the morning?

1 MR. SCHMIDT: Well, yes, yes.

2 I've got my days out of order.

3 MR. CARROLL: That would be Mr.
4 Tagliabue first thing in the morning.

5 JUDGE SIPPEL: He is coming in at
6 9:30?

7 MR. CARROLL: Yes.

8 JUDGE SIPPEL: All right. Now, do
9 we have the same situation with Mr. Tagliabue?
10 I mean, he has got a very short written
11 statement. Is he going to be going into
12 things that we have to excuse the public from
13 his testimony, or can we -- can we let him
14 talk to everybody?

15 MR. SCHMIDT: Not on our side,
16 Your Honor. It is only if he is asked
17 questions about things other than in his
18 written direct that I think that might call
19 for it, but, as we understand his testimony,
20 no.

21 JUDGE SIPPEL: All right.

22 MR. CARROLL: Well, if they stick

1 to that written statement, he might be a
2 pretty short witness, and that might work,
3 Your Honor. But --

4 JUDGE SIPPEL: All right. Well,
5 let's see what happens.

6 MR. CARROLL: Yes. Thank you.

7 JUDGE SIPPEL: We are in recess
8 until 9:30 tomorrow morning.

9 I will warn the witness, you are
10 not to talk about your testimony to any other
11 witness until this case is over. You can talk
12 to lawyers, of course.

13 THE WITNESS: Thank you.

14 JUDGE SIPPEL: All right. We are
15 in recess. Off the record. Thank you.

16 (Whereupon, at 4:48 p.m., the
17 proceedings in the foregoing
18 matter went off the record, to
19 reconvene at 9:30 a.m., the
20 following day.)

21

22

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